

should be brought and if claimed improper use of the tapes is then attempted, motion to discover or suppress the tapes may be appropriate. *On Lee v. United States*, 343 U.S. 747, 756 (1952). The courts are reluctant to decide important constitutional questions at a stage of proceedings when the necessity of their resolution has not been established. *Poe v. Ullman*, 367 U.S. 497 (1961). Declaratory and injunctive relief were properly denied.

"Nor do we reach the merits of the claim to possession of the tapes, upon whatever theory plaintiff may contend for such a right, for this is plainly an action against the sovereign, to which it has not consented. The tapes were recorded and retained by agents of the Secretary of Health, Education and Welfare in carrying out inspections authorized by the statute and pursuant to department policy. This is not an action to recover damages from defendants personally because of their personal actions. It seeks in this phase recovery of specific government property so that while nominally against the individuals it is in substance against the government over which the court, in the absence of consent, has no jurisdiction. *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682, 688 (1949). *Dugan v. Rank*,—U.S.—April 15, 1963, 31 LW 4347.

"The judgment dismissing the complaint is affirmed."

A petition for certiorari was subsequently filed in the Supreme Court and on 10-28-63, such petition was denied (375 U.S. 896).

30586. Childrens' vitamin tablets. (F.D.C. No. 51244. S. No. 43-543 B.)

QUANTITY: 4,827 100-tablet btls., at East Woodstock, Conn.

SHIPPED: 3-13-64, from Philadelphia, Pa.

RESULTS OF INVESTIGATION: Analysis showed that the article contained less than 50 percent of the declared amount of vitamin A, less than 72 percent of the declared amount of vitamin B₁, and less than 40 percent of the declared amount of vitamin B₁₂.

LIBELED: On or about 4-22-65, Dist. Conn.

CHARGE: 402(b)(1)—while held for sale, the valuable constituents, vitamin A, vitamin B₁, and vitamin B₁₂, had been in part omitted or abstracted from the article; and 403(a)—the label statement "Each tablet contains: Vitamin A Acetate 2500 USP Units * * * Vitamin B₁ (Thiamine) 1 mg. Vitamin B₁₂ USP 3 mcg. * * *" was false and misleading.

DISPOSITION: 7-6-65. Default—destruction.

30587. Dietary wafers. (F.D.C. No. 51476. S. No. 78-772 B.)

QUANTITY: 29 cases, of 12 36-wafer boxes each, at Knoxville, Tenn., in possession of the White Stores, Inc.

SHIPPED: Between 2-25-65 and 5-27-65, from Atlanta, Ga.

LIBELED: 8-13-65, E. Dist. Tenn.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 9-24-65. Default—destruction.

30588. Multiple vitamin capsules. (F.D.C. No. 51122. S. Nos. 43-868 B, 43-883 B.)

QUANTITY: 26 ctns., each containing 36 100-tablet btls., at Hartford, Conn., and 256 100-capsule btls., and 43 250-capsule btls., at Berlin, Conn.

SHIPPED: On an unknown date in 1963, from outside the State of Connecticut.

RESULTS OF INVESTIGATION: Analysis showed that the article contained less than 75 percent of the declared amount of vitamin B₁₂.

LIBELED: 3-25-65, Dist. Conn.; libel amended 7-9-65.